

Division of Real Estate & Professional Licensing

Endowment Care Trust Guide

Since 1970, a cemetery association or company has been required to deposit at least ten percent (10%) of the gross proceeds from the sale of interment rights into a separate endowment fund. Some cemeteries use the term “perpetual care”. In 1999, R.C. 1721.21 was amended to require that the funds be placed into a trust.

Which cemeteries are required to create an Endowment Care Trust?

Any Ohio cemetery operated by a company or association that sells interment rights must create an Endowment Care Trust. Family cemeteries as defined in R.C. 4767.02; cemeteries owned and operated entirely and exclusively by churches, religious societies, established fraternal organizations; municipal corporations or other political subdivision of the state like townships; and national cemeteries are NOT required to create an Endowment Care Trust.

How do you create an Endowment Care Trust?

The cemetery association or company will need to appoint a trustee(s) of the Endowment Care Trust; create a formal trust agreement to be signed by the trustee(s) and the cemetery; and a separate account (if not already established) will need to be opened to hold the Endowment Care Trust monies.

Who may be a trustee?

The cemetery may appoint as the trustee either three individuals who have lived in the county where the cemetery is located for at least one year; a national bank; a federal savings association; or a trust company that is licensed under R.C. 1111.04.

If the cemetery elects to appoint three individuals as the trustees of the trust, they must be bonded, or insured under an insurance policy, such as a crime/dishonesty policy less any deductible, in an aggregate amount of not less than one hundred percent of the funds held by the trustees. [R.C. 1721.21(E)]

How much money should be deposited and when should deposits be made?

A cemetery is required to set aside not less than ten percent (10%) of the gross proceeds from the sale of any burial lots, burial rights, entombment rights or columbarium rights. Deposits must be made within 30 days following the month in which the entire gross sales are received. [R.C. 1721.21 (D)]

Should the amount the cemetery charges for opening and closing a grave be included in the Total Gross Sales figure?

No.

Can the deposited funds be invested?

Any funds shall be held and invested only in the ways permitted under R.C. 2109.37 and R.C. 2109.371 or, if provided for in the instrument creating the trust, pursuant to the Ohio Uniform Prudent Investor Act. [R.C. 1721.21(E)]

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How much money can be withdrawn and how may the money be used?

The cemetery may only withdraw dividends and interest earned. That money shall be used only for the cost and expenses incurred to establish, manage, and administer the trust and for the maintenance, supervision, improvement and preservation of the grounds, lots, buildings, equipment, statuary, and the property of the cemetery. [R.C. 1721.21(f)]

The principal and capital gains must remain in the endowment care trust. Fees may not be taken out of the principal or capital gains of the trust. [R.C. 1721.21(J)(2)]

The cemetery needs a major repair completed. May money be taken from the Endowment Care Trust to pay for things like road repairs or a new building?

The cemetery may only withdraw dividends and interest earned from the trust. The cemetery may not withdraw any principal or capital gains from the trust.

What if I am starting a new cemetery?

A new cemetery, or any cemetery organized or developed after July 1, 1970, that is owned and operated by a cemetery association or company is required to start an Endowment Care Trust with an initial deposit of fifty thousand dollars' worth of cash or bonds. Once the cemetery has deposited an additional fifty thousand dollars received from the ten percent (10%) of the sale of burial lots and rights, it may elect to remove the first fifty thousand dollars out of the trust. To remove the initial fifty thousand dollar deposit the cemetery must submit proof to the trustee(s) that the additional fifty thousand dollars received from the ten percent (10%) of the sale of burial lots and rights has been deposited. [R.C. 1721.21(C)].

We do not sell burial lots at our cemetery. Are we required to have an Endowment Care Trust?

No. A cemetery that does not sell burial lots or rights is not required to create and maintain an Endowment Care Trust.

What should I report to the Division?

You are required to file an Endowment Care Trust Annual Report and an Endowment Care Trust Affidavit both at initial registration and every year with your renewal paperwork. Both forms can be found at the Division's website. www.com.ohio.gov/real. You are also required to provide a copy of the endowment care trust fund agreement at initial registration and any revised trust agreement with your renewal paperwork.

Who should I call if I have a question about the Endowment Care Trust?

You are welcome to call the Registration and Resolution Section of the Ohio Department of Real Estate at 614-466-4100. However, a cemetery association or company should consult with its legal counsel for a more complete understanding of the provisions in R.C. 1721.21.

This flyer is intended for general, informational purposes only and does not include all requirements set out in R.C. section 1721.21.